

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



STAFF REPORT: REGULAR CALENDAR

Application No.: 4-01-012

Applicant: Lechuza Villas West

Agent: Norman R. Haynie

Project Location: Various locations along Broad Beach Road and East and West Sea Level Drive, Malibu (Los Angeles County)

Project Description: Proposal to remove five access gates and associated signage along Sea Level Drive and Broad Beach Road, pave 37 public parking spaces including 5 handicap spaces, interspersed landscape areas and 78 cubic yards of grading (39 cu. yds. cut and 39 cu. yds. fill), and place informational signs along Sea Level Drive. The applicant is also requesting after-the-fact approval of an existing viewing area supported by retaining walls, a stairway from West Sea Level Drive to Lechuza Beach and steps from East Sea Level Drive to Lechuza Beach.

Lot A width	40 ft.
Lot I width	10 ft.
Pavement Coverage	15,000 sq. ft.
Landscape Coverage	700 sq. ft.
Parking Spaces	37

Local Approvals Received: City of Malibu Planning Department, Demolition Approval in Concept, December 28, 2000; City of Malibu Planning Department, Approval in Concept, January 11, 2001; City of Malibu Planning Department, Approval in Concept, February 28, 2001; County of Los Angeles Fire Department, Fire Protection Engineering Approval, March 15, 2001.

Substantive File Documents: Certified Malibu/Santa Monica Mountains Land Use Plan; Coastal Conservancy, Lechuza Beach Acquisition, October 26, 2000; Amended Complaint, MEHOA v. Lechuza Villas West, et al. (L.A. Co. Superior Court case no. SC063754), November 15, 2000; List of parties, documents filed and proceedings held, MEHOA v. Lechuza Villas West, et al. (L.A. Co. Superior Court case no. SC063754); Aerial Photos, 1975.

Summary of Staff Recommendation

Staff recommends **approval** of the proposed project with **three (3) special conditions** regarding (1) assumption of risk, (2) drainage and polluted runoff plans, and (3) operation and maintenance.

I. Staff Recommendation

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-01-012 pursuant to the staff recommendation.*

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Condition

1. Assumption of Risk

A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

1. The applicant acknowledges and agrees that the sites may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
2. The applicant acknowledges and agrees to assume the risks to the applicant and the properties that are the subject of this permit of injury and damage from such hazards in connection with this permitted development.
3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. *Prior to issuance of the coastal development permit*, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of Lot A and Lot I and an exhibit showing the location of the viewing area, stairways and parking areas approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Drainage and Polluted Runoff Plans

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control

the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting geotechnical engineer and geologist to ensure the plan is in conformance with consultant's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

3. Operation and Maintenance of Parking Areas

The proposed parking areas shall not open for public use until a public agency or private association, acceptable by the Executive Director, agrees to accept responsibility for the operation and maintenance of these areas. Prior to opening the parking areas to the public the accepting public agency or private association shall prepare, for the review and approval of the Executive Director, a comprehensive maintenance and operation program to include but not limited to: a litter collection plan; long term maintenance plan for informational signage, drainage system (pursuant to special condition no. 2 of this permit), landscaping, stairways, parking areas; and traffic control plan. The placement or construction of additional development or structures, such as restroom facilities, gates, additional signage, fencing/barriers or any change in the intensity of use of the parking areas, as may be required pursuant to an operation and maintenance program, shall require an amendment to this permit or a new coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to remove five metal access gates, three along East and West Sea Level Drive (Lot A) and two on Lot I, to improve public access to Lechuza Beach (Exhibit 1). Lot I is a 10 ft. wide strip of land descending from Broad Beach Road to the terminus of east Sea Level Drive and includes a pedestrian stairway (Exhibit 2). The security gates are automated iron gates, which prohibit public vehicular access but are currently operated to allow public pedestrian access during posted hours. One access gate is located at the west terminus of Sea Level Drive at Broad Beach Road, the second is on W. Sea Level Drive just north of Lot 156, the third spans the entrance to Lot I from Broad Beach Road, the fourth is also located on Lot I midway between Broad Beach Road and Sea Level Drive along with a private property sign proposed to be removed, and the fifth is located at the east terminus of Sea Level Drive at Broad Beach Road. See Exhibits 4 & 5.

The applicant is also proposing the construction of 37 paved public parking spaces (15,000 sq. ft.) with landscaped areas (700 sq. ft.) and associated signage along Lot A (East and West Sea Level Drive). See Exhibits 6 & 7. On W. Sea Level Drive the proposal includes approximately 4,000 sq. ft. of paving to create 12 parallel parking spaces with dispersed signs along a 640 ft. section of W. Sea Level Drive, including 1 handicap space at the terminus of the road near an existing unpermitted concrete viewing area that looks out over Lechuza Beach (Exhibit 12). This viewing area is supported by two 10 ft. max. high retaining walls constructed into the upper portion of the coastal bluff (Exhibit 10). The applicant is requesting after-the-fact approval of this viewing area and the supporting retaining walls.

On E. Sea Level Drive the applicant is proposing to pave approximately 10,500 square feet of paving to create 25 angled spaces along a 540 ft. section of the road including 4 handicapped parking spaces, 4 landscaped areas with native vegetation (i.e., coastal scrub, toyon bush). See Exhibits 7 & 11. The existing road is about 24 feet in width and the proposed parking area will add about 16 feet of additional paving adjacent to the road. The applicant is also proposing a total of 17 signs (8 on W. Sea Level Drive, 9 on E. Sea Level Drive) indicating public parking, direction to accessways to the public beach, no parking in the fire lane, and hours for public use (Exhibit 8). The proposal includes minimal grading (78 cu. yds.) to level the already relatively flat parking areas. Finally, the applicant is requesting after-the-fact approval for 2 existing unpermitted stairways, one 50 ft. long concrete and wooden stairway that descends from W. Sea Level Drive to Lechuza Beach and a 35 ft. long at grade wooden stairway that connects the stairway on Lot I and the terminus of E. Sea Level Drive to the sandy beach (Exhibit 10). There is an existing rock revetment approximately 15-20 ft. seaward of the proposed parking area along E. Sea Level Drive. It is not known when this revetment was constructed.

The applicant is the fee title holder of the property where the gates, proposed parking, and stairways are located. In addition, Lechuza Villas owns several undeveloped ocean front lots on Lechuza Beach. As the owner of the fee interests in Lot A (Sea Level Drive) and Lot I, Lechuza Villas proposes to remove the gates, retain the stairways, and improve the parking areas located on those properties.

In 1991 and 1993, the Commission considered various applications by Lechuza Villas to develop multiple lots along the undeveloped portion of Lechuza Beach shoreline. The Commission denied all of those proposed projects based on their inconsistency with the Chapter 3 policies of the Coastal Act concerning intrusion into public tidelands, public access and recreation, shoreline protective devices, ESHA, hazards and geological stability, visual resources, and cumulative impacts. Ultimately, the California Court of Appeal twice agreed with the State Lands Commission

that the boundary separating public tidelands from Lechuza Villas' beach lots is the ambulatory mean high tide line and the Court upheld the Coastal Commission's permit denials because Lechuza Villas failed to establish that it owned the land on which it proposed to develop.

On October 26, 2000, the Coastal Conservancy adopted a resolution that allocates funds for the Mountains Recreation and Conservation Authority (MRCA) to acquire the subject parcels (Lot I and a portion of Lot A), as well as 20 beachfront lots (Lots 140-156) and two inland parcels (Lot 76 and Lot U) for the purpose of providing public access along and to Lechuza Beach (Exhibit 2). The Conservancy's approval of funding is conditioned upon ensuring that pedestrian public access to Lechuza Beach is guaranteed. Four of these lots (Lots 142-145) were subsequently donated by the owner, Curci-Turner Company, to the MRCA which accepted the donation in December 2000. Four additional lots (Lot 146, 147 and the east and west halves of 148) were also donated by Curci-Turner in February, 2001 and were accepted by MRCA, pending confirmation by its Board. Lechuza Villas and the Conservancy are negotiating, but have not yet entered into a final agreement for the acquisition of Lot I, Lot A, and the beachfront lots owned by Lechuza Villas. The Coastal Conservancy and Mountains Recreation and Conservation Authority have been notified of the proposed project.

The security gates were constructed without the benefit of a coastal development permit by the Malibu-Encinal Home Owners Association (MEHOA). MEHOA's members are owners of lots in the subdivision where Sea Level Drive is located, who have easement rights to use Lot A (Sea Level Drive) and the walkway on Lot I for access to the beach. In 1977, the Coastal Commission notified MEHOA that the new metal gate at the entrance from Broad Beach Road onto Sea Level Drive was constructed without a coastal development permit, in violation of the Coastal Act. MEHOA asserts that this gate, and the other gates that are the subject of this application, were built to replace wooden gates that were present prior to the effective date of the Coastal Act. See Declaration filed in Superior Court by Bert Boeckmann (Exhibit 9). The Declaration of Mr. Boeckmann, a member of MEHOA's Board of Directors, states that the wooden gates were present in 1970 and MEHOA replaced them with metal gates in 1977. (Id.) The Commission staff believes that construction of the metal gates was new development that requires a permit under the Coastal Act. To date, the Commission has not pursued an enforcement action seeking to remedy the alleged violation involving the gate at Broad Beach Road and Sea Level Drive, or potential violations involving the other gates.

MEHOA has notified staff that it objects to the removal of the gates. MEHOA claims that it owns and controls the gates since MEHOA installed and maintains the gates and is responsible for maintenance of those lots where the gates are located, which are private roads and walkways within the tract and upon which the home owners possess ingress and egress easement rights. MEHOA submitted a letter dated January 8, 2001 with attached information to support its position (Exhibit 3). In March 2001, MEHOA submitted additional information to support its position. MEHOA raised this issue in a lawsuit filed in Superior Court in October 2000 against Lechuza Villas and other parties. The amended complaint filed by MEHOA contends, in part, that pursuant to certain Conditions, Covenants and Restrictions (CCRs) that bind owners of property in the subdivision, Lechuza Villas does not have the right to modify or remove the gates on Lot A and Lot I without MEHOA's consent and approval (which MEHOA has not given). In January 2001, MEHOA amended its complaint to add the Coastal Conservancy, Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority as defendants in the lawsuit, but the Commission is informed that MEHOA has not yet served the complaint on these parties. On March 5, 2001, the Superior Court sustained Lechuza Villas' demurrer without leave to amend,

thereby dismissing MEHOA's claims against Lechuza Villas. MEHOA has indicated that it will appeal this decision.

It is expected that MEHOA will also oppose the proposed public parking spaces based on its assertion that MEHOA must authorize any improvements on Lot A (Sea Level Drive) and that MEHOA has the right to control access along Sea Level Drive.

Commission staff has considered MEHOA's claims and determined that, even if MEHOA's position is upheld by the court at some time in the future, it is appropriate for the Commission to approve the coastal development permit for the proposed project. Lechuza Villas has documented that it is the fee owner of the subject lots, in compliance with the Commission's regulation that requires an applicant to document its legal interest in the project site (14 California Code of Regulations, Section 13053.5(b)). When the applicant is the fee owner of the subject parcel, the Coastal Act does not require the applicant to provide any further affirmative demonstration of its ability to proceed with the project. Section 30601.5 of the Coastal Act addresses this issue only when the applicant is *not* the owner of a fee interest in the project site, which is not the case here.

The Commission staff recognizes, however, that the applicant's ability to proceed with the project may be affected by the outcome of the legal proceedings pending between MEHOA and Lechuza Villas. The Coastal Commission does not take any position regarding the existence, terms or effect of deed restrictions or contractual agreements that may govern Lechuza Villas' activities on Lot A and Lot I. This is a dispute between private parties that cannot be resolved by the Coastal Commission. If the court eventually determines that Lechuza Villas' removal of the gates, other improvements, and/or public parking on Sea Level Drive cannot proceed without MEHOA's consent and approval, the Commission's approval and/or issuance of this Coastal Development Permit will have no impact on such a ruling. The Commission's action on this Coastal Development Permit only establishes that the project is consistent with the Coastal Act. The Commission notes that if the court determines that MEHOA's consent and approval is needed, Lechuza Villas may not be able to carry out the project approved under this Permit.

B. Public Access and Recreation

The Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies which address the issues of public access and recreation along the coast.

Coastal Act Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***
- (2) adequate access exists nearby, or,***
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Section 30220 of the Coastal Act states that:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided, consistent with the need to protect public safety, private property and natural resources, and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that in new shoreline development projects adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. All projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. As discussed previously, the existing security gates, concrete viewing area and stairs were constructed without the benefit of a coastal development permit, and therefore, their impacts on public access and recreation were not evaluated.

To assist in the determination of whether a project is consistent with the above cited Coastal Act public access and recreation policies, the Commission has, in the past permit actions located in Malibu area, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. Specific standards relative to public access at Lechuza Beach have been found to be consistent with the Coastal Act. The LUP, under Beach Access Program Objectives has prioritized vertical public access improvements. Public access improvements at Lechuza Beach were given a high priority. Policy 56-4 states that "Public purchase of beach and accessways properties is an objective in this area." As described below, Lechuza Beach has been used by the public and therefore Commission has evaluated the proposed development against the above cited public and recreation policies of the Coastal Act.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline, below the mean high tide line, under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with those rights. In the case of the proposed project, the removal of the gates, construction of parking, accessways, and placement of informational signs will not have an adverse impact on public access and recreation.

Lechuza Beach is about 2,700 feet in length. During the summer, a sandy beach runs its entire length. The nearest vertical public accessways near Lechuza Beach are a Los Angeles County operated vertical accessway approximately 1850 ft. east of the E. Sea Level Drive entrance at on Broad Beach Road and the entrance to El Matador State Beach approximately 2000 ft. west of the W. Sea Level Drive. The public has also historically parked along the shoulder of Broad Beach Road and then utilized Sea Level Drive to access the beach. At low tides and with some difficulty, Lechuza Beach can also be accessed laterally downcoast (east) from Broad beach, by traversing the rocky shoreline at Lechuza Point. By far the majority of beach users gaining access to Lechuza via tidelands come from El Matador State Beach, located about 2,000 feet upcoast (west) of Lechuza. The beach and offshore areas at Lechuza Beach are utilized for a variety of recreation activities including walking, running, picnicking, swimming, surfing, kayaking, fishing, snorkeling and diving.

The security gates are located between 35 and 650 ft. north of Lechuza Beach. The gates were installed by MEHOA sometime between 1975 and 1977 without benefit of a Coastal Development Permit. The Coastal Commission staff notified MEHOA in 1977 that the new gate at the entrance of Broad Beach Road and Sea Level Drive was constructed without a coastal development permit, in violation of the Coastal Act. Since 1991 MEHOA has allowed public pedestrian access through gates at the entrance of East and West Sea Level Drive during daylight hours.

With the donation of eight parcels to the Mountains Recreation and Conservation Authority and the potential acquisition of additional lots along the Lechuza Beach shoreline with funds allocated by the Coastal Conservancy, the public will enjoy lateral access along a significant stretch of beach. In addition, an easement to use Sea Level Drive and the accessway on Lot I is appurtenant to the donated beachfront lots. Thus, the public may have acquired access rights due to the donation of these lots. The proposed project will not interfere with those possible rights. In the case of the proposed project, the applicant is not inhibiting public access to the beach. Moreover, once the public's right to use the beach and accessways is fully established, the project will enhance access by removing the gates which pose a psychological barrier to beachgoers, providing public parking areas close to the beach, and maintaining accessways to Lechuza Beach. The proposed parking spaces will provide beach users a convenient access to a beach cove which is a unique situation in western Malibu. In addition, the proximity of the proposed parking to the beach on E. Sea Level Drive will afford uninterrupted views of the beach from the vehicles parked here. The close proximity to the beach in combination with the proposed handicapped spaces will allow persons of limited mobility to enjoy a beach experience. In addition, the handicapped parking space and viewing area located at the terminus of W. Sea Level Drive provides a unique opportunity for persons of limited mobility to enjoy the spectacular views of the beach and ocean from a bluff top location

Section 30214 of the Coastal Act provides that the public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place and manner of public access depending on the facts and circumstances in each case including but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.

- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

The topographic and geologic site characteristics of the project site are not a significant issue in this case. The proposed parking areas have been sited and designed to minimize the alteration of the terrain and account for geologic site characteristics. The proposed parking spaces are on existing relatively level areas directly adjacent to the existing road shoulder. Staff review of an August 1975 aerial photograph showed an approximate 310 foot long by 30 foot wide paved parking area in the same location as the proposed parking on E. Sea Level Drive. The width of this previous paved parking area exceeds the width of the proposed parking area. The previous paving at some point was removed in sections and partially replaced with exotic landscape vegetation (Exhibit 11). As previously mentioned, this section of paved parking is located landward of an existing rock revetment that provides protection of the road and supporting fill. The revetment begins approximately 15-20 feet seaward of the proposed parking area.

The as-built viewing area and stairway to the beach off of W. Sea Level Drive area is located on a 20 foot high bluff which is susceptible to erosion from wave action and runoff from the top of the bluff (Exhibit 10). Staff has reviewed an aerial photograph from August, 1975 and found that prior to the construction of these structures the public and/or residents in the area utilized several at grade foot paths down the bluff to the beach in this location. The viewing area was also cleared of vegetation and utilized as an informal viewing area and staging area for the foot paths. In fact the August 1975 aerial photograph shows several people within this cleared viewing area. The as-built viewing area and above grade stairway have provided a controlled and limited access point to the beach and view point on the bluff. The previous footpaths have revegetated which has reduced the potential erosion of this on this bluff. In addition, the elevated stairway design and location on the bluff minimized the alteration of the bluff and has prevented informal at grade paths down the bluff.

The at grade stairway at the terminus of the stairway on Lot I and E. Sea Level Drive is located partially on road fill and the sandy back beach (Exhibit 10). This area is completely covered with exotic invasive ice plant species. In addition, based on review of aerial photography this stairway was sited and designed to follow a previous informal pathway to the beach. This at grade stairway was designed to conform to the terrain and minimize encroachment onto the sandy beach.

The base of both the eastern and western stairways at times will be subject to damage from wave action during winter storms (discussed in detail in Hazard Section below). The stairways will require on-going maintenance and repairs given their location within the wave runup zone. However, it should be noted that this type of stairway configuration to the beach is a typical design which is commonly found at a number of public beaches in California and in the Malibu area. El Matador State Park just upcoast has a similar stairway configuration which terminates within the wave runup zone. Therefore, based on the above discussion, the Commission finds that the proposed project has been sited and designed to consider the topographic and geologic site characteristics.

Subsection (2) of Section 30214, addresses the capacity of the site to sustain use. The applicant originally proposed 32 parking spaces on E. Sea Level Drive with three located on the far eastern portion of the road and the remaining located in a line along the western portion of the road. In response to staff's concerns regarding the visual impact of a long uninterrupted line of cars on the road and the remote location of the three spaces on the eastern end of the road, which are not located near a public beach, the applicant reduced the number of parking spaces to 25 and provided landscape breaks between the parking spaces. The reduction in the number of spaces also reduced the intensity of use of the existing road and future parking area. However, episodically the level of use of the road on E. Sea Level may increase, particularly on weekends and holidays in the summer. To ensure traffic is controlled and managed during heavy use periods, the Commission finds, it is necessary to require that a public or private association accept responsibility for operation and maintenance of the parking areas prior to opening the parking areas to the public and prepare an operation and maintenance plan that addresses traffic control during peak use periods, as specified in **Special Condition No. Three (3)**.

Coastal Act section 30214, subsection (3), address the appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. In addition, subsection (4), speaks to the need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. To protect the privacy of the residents and protect fragile resources of the area, the applicant has proposed informational signs which will direct the public to designated public parking spaces and accessways to the public beach. The beach lots directly in front of the parking area are deed restricted as recreational lots for residents within the subdivision. Therefore, to ensure that the public will not park in private residential parking spaces or utilize the private beach lots, the informational signs are necessary to inform visitors where the public beach is located. To ensure these informational signs are maintained, the Commission imposes **Special Condition No. Three (3)**, which requires that a public agency or private association must accept responsibility for the operation and maintenance public parking areas and prepare an operation and maintenance plan which provides for the maintenance of these signs. In addition, to ensure that litter generated from the public parking areas is collected and disposed of properly, as is required under subsection (4) of Coastal Act section 30214, Special Condition No. Three requires the agency accepting responsibility for the operation and maintenance of the public parking area to prepare an operation and maintenance plan that addresses how trash will be collected and disposed of properly.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30211, 30212, 30214, and 30220 of the Coastal Act.

C. Geology and Wildfire Hazard

Section 30253 of the Coastal Act states, in pertinent part, that new development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in the Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Even beachfront properties have been subject to wildfires. Furthermore, beachfront sites are subject to flooding and erosion from storm waves.

Further, the bulk of the proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. The Commission notes that the Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently during the 1998 severe El Nino winter storm season. The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. Past occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu area alone.

In the winter of 1977-1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost \$5 million to private property alone.

During the El Nino storms recorded in 1982-1983, high tides of over 7 feet, combined with storm waves of up to 15 feet, caused over \$12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California, and in particular, Malibu coast. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu Coast.

Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that any beachfront development, despite design considerations, involves the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

As mentioned above, the as-built stairways at the terminus of East and West Sea Level Drive will be subject to damage from wave action and erosion of the bluff. In addition, the viewing area supported by retaining walls will be subject to potential damage from bluff erosion. Finally, although a rock revetment protects the proposed 25 parking spaces fronting East Sea Level Drive, there is a potential for damage to the parking area from waves overtopping this structure. Therefore, the Commission finds that due to the possibility of storm waves, surges, erosion, landslide, flooding, and wildfire, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's assumption of risk, as required by **Special Condition No. One (1)**, when executed and recorded on the property deed, will show

that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

In addition, emergency access on East and West Sea Level Drive is a concern given these roads are a single ingress/egress routes. With the potential addition of 25 cars parking on East Sea Level Drive and 12 cars parking on West Sea Level Drive access for emergency vehicles during emergency situations is an issue. Therefore, Commission staff requested the applicant obtain review and approval of the proposed parking plan from Los Angeles County Fire Department. The applicant has submitted a parking plan dated March 15, 2001 that has been reviewed and approved by the Fire Department. The parking plan includes a emergency vehicle turn around area at the terminus of both East and West Sea Level Drive. The applicant is proposing no parking signage at the turn around areas to ensure cars do not block these areas (Exhibit 8). In addition, through **Special Condition No. Three (3)**, the Commission is requiring that a public agency or private association accept responsibility for the maintenance and operation of the parking areas. The accepting agency shall be required to prepare a long term operation and maintenance program for the parking areas which will include maintenance of the signage. Thus, the no parking signs will be maintained to ensure the turn around areas are not blocked by cars.

Therefore, the Commission finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with §30253 of the Coastal Act.

D. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

As described above, the proposed project includes the paving of 15,000 sq. ft. of Lot A with 700 sq. ft. of native landscaping and minimal grading to even out the parking area. The site is considered a beachfront development, as it is located between Pacific Coast Highway and the Pacific Ocean on Lechuza Beach. In 1979, the California State Water Resources Control Board designated the off shore area including the intertidal zone between Mugu Lagoon and Latigo Point in Malibu as an Area of Special Biological Significance. The area between Big Sycamore Canyon and Lechuza Point was further recognized as an area of extensive kelp beds and offshore reefs with dependent biological assemblages of exceptional quality. The area was also described in the State Boards findings as being in a natural state and containing the largest open coast kelp beds remaining in the region. These areas of Special Biological Significance were intended to afford special protection to marine life through prohibition of waste discharges within these areas.

Therefore, it is critical that runoff from the proposed parking areas are filtered to minimize discharge of pollutants into the ocean.

The proposed development may result in an increase in impervious surface, which in turn may decrease the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The proposed parking area will accumulate pollutants such as petroleum hydrocarbons including oil and grease from vehicles, heavy metals, synthetic organic chemicals, dirt litter, bacteria and pathogens from animal waste. The discharge of these pollutants into coastal waters can cause cumulative impacts such as eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms, leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes; reduce optimum populations of marine organisms; and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e., the BMP capacity beyond which insignificant increases in pollutant removal will occur, relative to the additional costs). Therefore, the Commission requires the selected post-construction structural BMPs to be sized based on design criteria specified in **Special Condition No. Two (2)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with §30231 of the Coastal Act.

E. ESHA

Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The Sensitive Environmental Resource Map in the certified Malibu Land Use Plan designates the Lechuza beach area, rocky point areas, bluff and offshore kelp beds as Environmentally Sensitive Habitat Areas (ESHA). The LUP is used as guidance by the Commission in past permit actions in evaluating a project's consistency with the Coastal Act.

The coastal bluff on Lechuza beach has been colonized by invasive plant species as a result of residential development on top of the bluff. The proposed parking area on East Sea Level Drive is not located in an ESHA. This area between the existing road and revetment has been disturbed by past development activities including a 310 foot long parking area that existed the mid 1970's and has since been replaced with a variety of exotic and invasive plant species (Exhibit 11). The proposed project in this area will result in minimal removal of some exotic vegetation. The proposed parking area on West Sea Level Drive is located on the currently disturbed road shoulder and will not require the removal of any sensitive plant species (Exhibit 12). The proposed parking area and steps down to the beach on E. Sea Level Drive will be located on road fill and the back beach area in an area covered in invasive ice plant landward of the degraded habitat area and will not encroach on any ESHA areas.

The coastal bluff at Lechuza Beach although disturbed by exotic vegetation is considered an ESHA. As previously mentioned, there has been historic public access down the bluff via at grade pathways at the end of West Sea Level Drive which resulted in removal and disturbance of the bluff vegetation. An aerial photograph from August 1975 shows the at grade paths to the beach. The stairway at the end of East Sea Level Drive does not traverse the bluff but is located on the road fill and the back beach in an area completely covered with invasive ice plant. This area is not considered ESHA. Sometime in the late 1970's or early 1980's the MEHOA constructed the stairway down the western bluff face off of West Sea Level Drive to provide a safe accessway down the bluff to the beach. The stairway has minimized erosion on the bluff and the loss of bluff vegetation and habitat resulting from multiply pathways down the bluff. In order to mitigate any potential adverse impacts to the bluff ESHA that may result from public access, the applicant is requesting after-the-fact approval of the existing stairways which serve to prevent detrimental effects to the sensitive habitat area along the bluff by establishing a defined path and controlling foot traffic that would otherwise occur along random footpaths traversing the bluff.

In addition, the Commission notes that the use of non-native and/or invasive plant species in landscape design results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant community habitat by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant species habitat by non-native/invasive plant species, which tend to outcompete native species, adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant

adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area and the adjacent environmentally sensitive dune habitat, the applicant also proposes to use only native plant species in landscape areas, invasive plant species shall not be used.

Further, in order to ensure that any adverse effects to the sensitive resources of Lechuza Beach are minimized, **Special Condition No. Three (3)** requires a public agency or private association to accept responsibility for the operation and maintenance of the parking areas. Prior to opening the parking areas to the public, the accepting public agency or private association shall prepare a comprehensive maintenance and operation program to include but not limited to: a litter collection plan; a long term maintenance plan for informational signage, a drainage system (pursuant to special condition no. 2 of this permit), landscaping, and parking areas; and a traffic control plan. This program will ensure litter is collected and disposed of properly which will minimize any potential adverse impacts to wildlife or plant species. The operation and maintenance program will also ensure the signage is maintained to direct the public to designated access points which will minimize foot traffic over and through sensitive resources. Finally, the plan shall provide for the continued maintenance of the drainage system from the parking areas which will minimize the transmittal of pollutants from the parking areas to the ocean.

The Commission finds that, as conditioned, the proposed project is consistent with Section 30240 of the Coastal Act.

F. Visual Resources

Section **30251** of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

Section 30251 of the Coastal Act requires public views to and along the ocean and scenic coastal areas to be considered and protected when creating new development. As previously discussed, the proposed project includes removal of five access gates and associated signage along Sea Level Drive and Broad Beach Road, paving 37 public parking spaces including 5 handicap spaces, interspersed landscape areas and minimal grading (39 cu. yds. cut and 39 cu. yds. fill), and implementing informational signs along Sea Level Drive. The applicant is also requesting after-the-fact approval of an existing lookout platform/stairway from W. Sea Level Drive to Lechuza Beach and steps from E. Sea Level Drive to Lechuza Beach. The proposed project sites are not visible from Pacific Coast Highway. Furthermore, the visual resources along the coastline are not impacted as the proposed development does not rise above existing grade except for the signs which are small structures that would not obstruct views. Additionally, the existing accessways are composed primarily of natural wood materials, colored in earth tones, conform to the natural

terrain and are consistent with the character and scale of existing development (Exhibit 10). Finally, the accessway on W. Sea Level Drive provides a viewing platform from which visitors can look out to the ocean and protects the bluff from adverse impacts, thus enhancing public viewing opportunities and protecting sensitive resources at Lechuza Beach.

Therefore, the Commission finds that the project, as proposed, will not significantly impact public views to or along the beach and is consistent with §30251 of the Coastal Act.

G. Violations

As previously described, five metal access gates were constructed on the subject properties without the benefit of the required coastal development permit. Commission staff contends that construction of the gates required a permit under the Coastal Act. As the fee interest owner of the properties on which the gates are located, Lechuza Villas is proposing to remove the gates. Removal of the gates will correct this alleged violation of the Coastal Act.

The two existing stairways were also constructed without a coastal development permit. Staff notes that although the stairways were not constructed by the applicant, as the fee owner, Lechuza Villas proposes to retain the stairways as they exist to sustain access to the beach. The applicant has included both stairways as part of the project description to attain after-the-fact approval for this development.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review and approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

H. Local Coastal Program

Section 30604(a) of the Coastal Act states:

Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with §30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with §30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is consistent with the policies of Chapter 3 of the Coastal Act as required by §30604(a).

I. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.